IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE M.NARAYANA REDDY

WRIT APPEAL NO : 93 of 2005 & WRIT PETITION No.9781 of 2004

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WRIT APPEAL NO : 93 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 03/11/2004 in WVMP No.1558 of 2004 in WP NO : 9781 OF 2004 on the file of the High Court.)

Between:

Kapuluru Rangareddy, S/o.Pulla Reddy,
R/o.Vasudevapalem Naidupet Mandal Nellore District.

..... APPELLANT

AND

1 J.Madhusudhana Reddy S/o.Rama Subbareddy
R/o.Vemulaguntapalem Naidupet Mandal Nellore District.
2 The District Collector Nellore District Nellore.
3 The Mandal Revenue Officer, Naidupet Mandal Nellore District.

.....RESPONDENT(S)

Counsel for the Appellant:MR.SAI GANGADHAR CHAMARTY

Counsel for the Respondent No.1: MR.D.SRINIVAS

Counsel for the Respondents 2 and 3: G.P. for Revenue

And

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WRIT PETITION NO : 9781 of 2004

Between:

J.Madhusudan Reddy S/o Rama Subba Reddy
Vemuguntapalem, Annamedu Post, Naidupet(M) , nellore Dist

..... PETITIONER

AND

1 The District Collector Nellore Dist at Nellore
2 The Mandal Reveneue Officer Naidupet Mandal , Naidupet, Nellore Dist
3 Kapuluri Ranga Reddy S/o Pulla Reddy
Vasudevapalem, Kapuluru Post, Naidupet(M) , Nellore Dist

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus, declaring the notice in R.C.B.No.327/2004, dt. 28/05/2004 issued by the 2nd respondent as illegal, arbitrary, without jurisdiction and consequently set aside the same

Counsel for the Petitioner:MR.SRINIVAS DAMMALAPATI

Counsel for the Respondent Nos.1 & 2: GP FOR REVENUE

Counsel for the Respondent No.3: Sri Sai Gangadhar Chamarthy

The Court made the following Common Order: (per Sri Devinder Gupta, CJ)

Appeal is by the 3rd respondent in the writ petition against the order passed by learned single judge declining to vacate the interim order passed in the writ petition staying operation of the order dated 28.5.2004 passed by the Mandal Revenue Officer, Naidupet Mandal, Nellore. The writ petition is pending consideration before the learned single judge.

With the consent of the parties, we have taken up the writ petition for hearing.

Writ Petition was filed by the 1st respondent herein to have the notice dated 28.5.2004 issued by the 2nd respondent set aside on the ground that before issuing the notice impugned in the writ petition, no show cause notice was issued to the 1st respondent-writ petitioner and no opportunity was provided of being heard. It was also alleged that he was not furnished with the report of the Mandal Deputy Surveyor and thus he could not have been directed by the Mandal Revenue Officer to provide 15 feet road on the Southern side of the patta land to the agricultural land owned by appellant through Survey No.39.

Learned counsel for the appellant submits that there is some encroachment made by the 1st respondent-writ petitioner which was sought to be removed and writ petitioner has nothing to do with the land in Survey No.39.

At this stage, we need not go into the merits of the case. The notice issued by

the Mandal Revenue Officer makes a reference to some agreement under which it is alleged that writ petitioner had agreed to provide road on the Southern side of his patta land. Notice nowhere refers to any encroachment and it only directed the writ petitioner for removing the encroachment. There is no manner of doubt that in case action has to be taken against the writ petitioner with respect to land alleged to have been encroached by the writ petitioner, it will be for the Mandal Revenue Officer or any other authority concerned to take out appropriate proceedings in accordance with law by clearly mentioning in the show cause notice about the nature of encroachment and the extent of encroachment made with Survey Number. We will call upon the Mandal Revenue Officer to issue notice to the writ petitioner as to why he should not be evicted from the encroached land and then to pass appropriate orders in accordance with law for removing such encroachments and not merely on assumption that encroachment has been made. Notice dated 28.5.2004, impugned in the writ petition is bad.

Therefore, we allow the writ petition and quash and set aside the impugned notice dated 28.5.2004 issued by the Mandal Revenue Officer, Naidupet, with liberty reserved to the revenue authorities to take out appropriate proceedings strictly in accordance with law either for removing the encroachments or for taking such other steps as are permissible under law for removal of such encroachments.

Simultaneously, we dispose of the writ appeal also by this very order. No costs.

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DEVINDER GUPTA, CJ

Date: 1st February, 2005

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M. NARAYANA REDDY,J

Pnb

To

1. The District Collector Nellore District at Nellore.

2. The Mandal Revenue Officer Naidupet Mandal , Naidupet, Nellore District.

3. Two C.cs. to the Government Pleader for Revenue, High Court Buildings, Hyderabad. (OUT)

4. Two C.D. copies